IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

INTERNATIONAL UNION, SECURITY, POLICE, AND FIRE PROFESSIONALS OF AMERICA (SPFPA), Plaintiff,	)	
	)	**CIVIL ACTION**
v.	)	
	)	**No. 04-2242-KHV**
UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA INTERNATIONAL UNION, et al., Defendants.	)	

MEMORANDUM AND ORDER

International Union, Security, Police and Fire Professionals of America brings suit against the United Government Security Officers of America International Union, its Local Union 254, Bryan Good and Glen Allen, alleging breach of fiduciary obligation under 29 U.S.C. § 501 (Count 1), breach of fiduciary duty (Count 2), conversion (Count 3), breach of contract under 29 U.S.C. § 185 (Count 4), breach of contract under state law (Count 5) and third party interference with a contractual relationship (Count 6). In Count 7, plaintiff makes demand for funds currently held by the Bank of Parsons. This matter comes before the Court on Defendants' Motion To Dismiss (Doc. #16) filed July 16, 2004. For reasons stated below, the Court sustains defendants' motion in part.

Factual Background

Plaintiff's complaint alleges the following facts:

International Union, Security, Police and Fire Professionals of America ("SPFPA") and its Local 253 served as the collective bargaining agent for security employees who worked for Day & Zimmerman

at the Army Ammunition Plant in Parsons, Kansas. On November 6, 2002, the National Labor Relations Board conducted an election in which employees voted to have United Government Security Officers of America International Union ("UGSOA") and its Local 254 – rather than plaintiff – represent them. In accordance with plaintiff's constitution and bylaws, SPFPA Local 253 later dissolved.

SPFPA Local 253 left approximately $19,843.41 in an account at the Bank of Parsons. The SPFPA constitution provides that upon dissolution, all funds and property of the local revert to plaintiff. Plaintiff directed Bryan Good and Glen Allen, former officers of SPFPA Local 253, to return all funds and property within their control. UGSOA directed, advised and encouraged Good and Allen to retain possession of the property, and they did so. UGSOA and Local 254 thereafter took possession of all funds and property of the former Local 253. Furthermore, plaintiff has not received copies of annual audits of Local 253, and therefore it has not filed quarterly audit reports for March 31 through November 18, 2002. Plaintiff asked the Bank of Parsons to release the funds of Local 253, but it refused and placed a hold on the account.

Plaintiff filed its complaint on May 27, 2004. As noted, it alleges two federal claims: breach of fiduciary obligation under 29 U.S.C. § 501 (Count 1) and breach of contract under 29 U.S.C. § 185 (Count 4). It also brings four state law claims: breach of fiduciary duty (Count 2), conversion (Count 3), breach of contract (Count 5) and third party interference with a contractual relationship (Count 6). In Count 7, plaintiff demands funds currently held by the Bank of Parsons.

Defendants assert that Count 1 does not state a claim on which relief can be granted because the union lacks standing to bring suit under 29 U.S.C. § 501. Defendants assert that Count 4 does not state a claim as to Good and Allen because individuals cannot be held liable under 29 U.S.C. § 185. Defendants

argue that Counts 2, 3, 5 and 6 do not state a claim because federal laws preempt the state law under which plaintiff purports to sue. Finally, defendants assert that this Court lacks subject matter jurisdiction over Counts 2, 3, 5 and 6 because plaintiff did not invoke jurisdiction under the proper statute.

Standards For Motions To Dismiss Under Rule 12(b)(1)

The Court may only exercise jurisdiction when specifically authorized to do so, see Castaneda v. INS, 23 F.3d 1576, 1580 (10th Cir. 1994), and must "dismiss the cause at any stage of the proceeding in which it becomes apparent that jurisdiction is lacking." Scheideman v. Shawnee County Bd. of County Comm'rs, 895 F. Supp. 279, 280 (D. Kan. 1995) (citing Basso v. Utah Power & Light Co., 495 F.2d 906, 909 (10th Cir. 1974)); Fed. R. Civ. P. 12(h)(3). Plaintiff sustains the burden of showing that jurisdiction is proper, see id., and he must demonstrate that the case should not be dismissed. See Jensen v. Johnson County Youth Baseball League, 838 F. Supp. 1437, 1439-40 (D. Kan. 1993).

Rule 12(b)(1) motions to dismiss for lack of subject matter jurisdiction generally take two forms: facial attacks on the complaint or factual attacks on the accuracy of the allegations in the complaint. See Holt v. United States, 46 F.3d 1000, 1002-03 (10th Cir. 1995). Defendant's motion to dismiss Counts 2, 3, 5 and 6 falls within the former category because the Court need not consider evidence outside the complaint.

Standards For Motions To Dismiss Under Rule 12(b)(6)

A Rule 12(b)(6) motion should not be granted unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." GFF Corp. v. Associated Wholesale Grocers, Inc., 130 F.3d 1381, 1384 (10th Cir. 1997) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The Court accepts all well-pleaded factual allegations in the complaint as true and draws

all reasonable inferences from those facts in favor of plaintiff. See Shaw v. Valdez, 819 F.2d 965, 968 (10th Cir. 1987). In reviewing the sufficiency of plaintiff's complaint, the issue is not whether plaintiff will prevail, but whether plaintiff is entitled to offer evidence to support its claims. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). Although plaintiff need not precisely state each element of its claims, it must plead minimal factual allegations on those material elements that must be proved. See Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991).

Analysis

I. Failure To State A Claim

A. Breach Of Fiduciary Obligation Under 29 U.S.C. § 501(b) (Count 1)

Count 1 alleges that Good and Allen breached fiduciary obligations to SPFPA by delivering its property to UGSOA. Defendants seek dismissal, first arguing that 29 U.S.C. § 501(b) does not authorize unions to bring suit and that plaintiff therefore lacks standing to sue. Plaintiff responds that the statute does not limit a union's right to sue, and that it in fact implies that a labor organization *can* bring suit.

Section 501(b) of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA") provides that "any member of [a] labor organization" may file suit in federal district court to seek appropriate relief, for the benefit of the labor organization, for the violation of duties declared in 29 U.S.C. § 501(a). Specifically, Section 501(b) provides in part as follows:

> When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other

> appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte.

Courts have disagreed whether unions may bring suit under Section 501(b), and the Tenth Circuit has not addressed the issue. The Ninth Circuit has concluded that the plain language of the statute does not permit a union to bring suit under Section 501(b) and that district courts lack subject matter jurisdiction over such suits. Bldg. Material & Dump Truck Drivers, Local 420 v. Traweek, 867 F.2d 500, 506-07 (9th Cir. 1989). In contrast, the Eleventh Circuit has held that a union cause of action can be implied under Section 501(b) even though the plain language of the statute does not grant a right of action to maintain such a suit. Int'l Union of Elec., Electrical., Salaried, Mach. & Furniture Workers, AFL-CIO v. Statham, 97 F.3d 1416 (11th Cir. 1996). The Supreme Court has recognized the conflict but has not resolved it. Guidry v. Sheet Metal Workers Nat'l Pension Fund, 493 U.S. 365, 375 n.16 (1990).

Numerous district courts have held that a union may not bring suit under Section 501(b). See, e.g., Local 15 of Int'l Bhd. of Elec. Workers v. O'Reilly, No. 02 C 6464, 2003 WL 29896 (N.D. Ill. Jan. 2, 2003) (if Congress had wanted to give unions same rights of action as union members under statute, it could have given them such rights); Dunlop-McCullen v. Pascarella, No. 97CIV.0195 (PKL)(DFE), 2002 WL 31521012 (S.D.N.Y. Nov. 13, 2002) (no right of action for union); Local 1150 of Int'l Bhd. of Teamsters v. Santamaria, 162 F. Supp.2d 68 (D. Conn. 2001) (legislative history of 29 U.S.C. § 501 shows no congressional intent to provide federal remedy for unions); United Trans. Union v. Bottalico, 120 F. Supp.2d 407 (S.D.N.Y. 2000) (legislative history provides no strong indicia to overcome presumption that Congress did not intend to provide remedy to unions); Int'l Longshoremen's Ass'n, AFL-CIO v. Spear, 995 F. Supp. 564 (E.D. Pa. 1998) (unions have adequate remedies under state law). But see Int'l

Longshoremen's Ass'n, S.S. Clerks Local 1624, AFL-CIO, & Int'l Longshoremen's Ass'n, Container Maint. Refrigeration Repair Employees Local 1970, AFL-CIO v. Va. Int'l Terminals, Inc., 914 F. Supp. 1335 (E.D. Va. 1996) (congressional intent to provide right of action inferred from statutory language); Operative Plasterers & Cement Masons Int'l Assoc. of the United States & Can. v. Benjamin, 776 F. Supp. 1360 (N.D. Ind. 1991) (29 U.S.C. § 501(a) creates cause of action sufficient to confer jurisdiction under 28 U.S.C. § 1337).

After reviewing the parties' briefs and existing case law, the Court agrees that the union has no cause of action under 29 U.S.C. § 501. For reasons stated in Spear, 995 F. Supp. at 564, Santamaria, 162 F. Supp.2d at 68, and Bottalico, 120 F. Supp.2d at 407, the Court finds that plaintiff cannot bring suit under 29 U.S.C. § 501. It therefore sustains defendants' motion to dismiss Count 1 of the complaint.

To cure any lack of standing in Count 1, plaintiff seeks leave to add an individual union member as a plaintiff. Under Fed. R. Civ. P. 15(a), leave to amend shall be freely given when justice so requires, unless the amendment would be futile. See Drake v. City of Fort Collins, 927 F.2d 1156, 1163 (10th Cir. 1991). If plaintiff seeks leave to amend, however, it must file a separate motion for leave to do so in compliance with D. Kan. Rule 15.1. Any motion and proposed complaint shall allege satisfaction of the prerequisites to suit by an individual union member, including the requirement in Section 501(b) that the member has first made demand on the union to sue and the union refused.

B. Breach Of Contract Under 29 U.S.C. § 185(a) (Count 4)[1]

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[1] 29 U.S.C. § 185 is often referred to as Section 301 of the Labor Management Relations Act ("LMRA"), or simply § 301. To avoid confusion, the Court will refer to the statute using the full cite or as Section 185.

Count 4 alleges that Good and Allen breached contractual obligations under the SPFPA constitution and bylaws. Defendants argue that Good and Allen are not individually liable under 29 U.S.C. § 185(a) and that this claim must be dismissed. Section 185(a) provides as follows:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

In Complete Auto Transit, Inc. v. Reis, 451 U.S. 401, 416 (1981), the Supreme Court held that Section 185 does not permit damage actions against individuals for violation of collective bargaining agreements. After reviewing the statute's legislative history, the Court found that Congress meant to exclude individual union members from damages liability. Id. The Court expressly declined to decide whether injunctive relief can be sought against individuals. Id. at 416 n.17. Circuit courts have concluded that suits for equitable relief can be brought against individuals. See Statham, 97 F.3d at 1422; Shea v. McCarthy, 953 F.2d 29, 32 (2d Cir. 1992). The Second Circuit reasoned that "[t]he interests of accountability, consistency, conformity and stability . . . will be served if union officials who violate obligations thus assumed are subject to suit under [Section 185] by other members whose interests are adversely affected." Shea, 953 F.2d at 32. The Court agrees, and adopts the reasoning in these cases.

Plaintiff seeks various types of relief, including return of physical property, reimbursement of fines and penalties, accounting of expenditures, release of funds, exemplary and punitive damages, attorney fees and costs and interest. See Complaint (Doc. #1) filed May 27, 2004. Plaintiff has not identified which relief specifically corresponds to Count 4. Defendants argue that Count 4 should be dismissed because plaintiff seeks money damages as its primary remedy and plaintiff's request to recover other property is tied to its

attempts to recoup money. Plaintiff characterizes its request for the return of its property, including funds, as an equitable claim. The parties have not fully briefed the issue whether the separate requests for relief are legal or equitable, and the Court declines to specifically characterize each of plaintiff's requests at this time. To the extent that plaintiff seeks equitable relief, however, defendants' motion to dismiss is denied.

C. Breach Of Fiduciary Duty And Conversion State Claims (Counts 2 and 3)

Count 2 alleges that Good and Allen breached fiduciary obligations under state law. Count 3 alleges that Good, Allen and UGSOA are liable under state law for conversion of property. Defendants argue that Congress intended to fully occupy the field of regulation with respect to the duties of union officers and that plaintiff's state law claims for breach of fiduciary duty and conversion are therefore preempted by 29 U.S.C. § 501(a) and (b). Plaintiff maintains that 29 U.S.C. § 523 contradicts defendants' argument.

Section 501(a) provides that "officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group." It itemizes the fiduciary responsibilities of union officers, as follows: (1) to hold union money and property solely for the benefit of the organization and its members; (2) to manage, invest, and expend the same in accordance with the union constitution, bylaws and any resolutions thereunder; (3) to refrain from dealing with the union as an adverse party or on behalf of an adverse party in any matter connected with the union officer's duties; (4) to refrain from holding or acquiring any pecuniary or personal interest which conflicts with the interests of the union; and (5) to account to the union for any profit received by the officer in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the

organization. Id.

In 29 U.S.C. § 523(a), Congress included a "catchall" anti-preemption provision which provides as follows:

> Except as explicitly provided to the contrary, nothing in this Act shall reduce or limit the responsibilities of . . . any officer . . . under any other Federal law or under the laws of any State, and except as explicitly provided to the contrary, nothing in this Act shall take away any right or bar any remedy to which members of a labor organization are entitled under such other Federal law or law of any State.

Federal law preempts state law when the federal statute expressly preempts state law, when Congress intended to occupy the entire field or when state law conflicts with federal law. See Brown v. Hotel & Rest. Employees & Bartenders Int'l Union Local 54, 468 U.S. 491, 500-01 (1984). Defendants argue that the comprehensive nature of the fiduciary duties set forth in Section 501(a) indicates a congressional intent to occupy the entire field in this area of law.

The plain language of the statute reveals no express preemption of state law. If anything, it compels a conclusion that Congress did not intend to preempt state law remedies. Defendants cite no authority, legislative history or case law which shows congressional intent to occupy the field, and offer only their own conclusory interpretation and argument. The Court's research reveals no case in which a court has held that 29 U.S.C. § 501(a) preempts a party's claim for breach of fiduciary duty or conversion. The Court therefore finds that 29 U.S.C. § 501(a) does not preempt plaintiff's state law claims under Counts 2 and 3 of the complaint.[2]

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[2] Defendants also argue that plaintiff cannot establish a prima facie case of conversion because defendants have no ownership, control or possession of the funds at issue. Plaintiff seeks property (books and records) which defendants allegedly do own, control or possess, and defendants' argument is therefore not persuasive.

D. Breach Of Contract And Third-Party Interference State Claims (Counts 5 and 6)

Count 5 alleges that Good and Allen breached contractual obligations set forth in the union constitution when they did not release to plaintiff the funds, books and records of Local 253. Count 6 alleges that UGSOA unlawfully interfered with the contractual and fiduciary relationship between SPFPA and its union members by deliberately inducing Good and Allen to retain the property in breach of plaintiff's constitution. Plaintiff brings both counts under the common law of the State of Kansas. Defendants argue that 29 U.S.C. § 185(a) preempts state common law claims because it requires that federal courts fashion a policy of national labor laws using federal substantive law. See Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 209 (1985).

Section 185(a) authorizes suits "between an employer and a labor organization representing employees in an industry . . ., or between any such labor organizations." It also authorize suits between union members and their international unions. See Wooddell v. Int'l Bhd. of Elec. Workers, Local 71, 502 U.S. 93 (1991) (violation of union constitution constitutes violation of contract between two unions).[3] Section 185(a) compels courts to fashion federal substantive law based on policy of national labor laws to govern such suits. See Textile Workers v. Lincoln Mills, 353 U.S. 448, 456-57 (1957). In enacting Section 185(a), Congress intended doctrines of federal labor law uniformly to prevail over inconsistent local

[3] Since Wooddell, the Second and Eleventh Circuits have held that Section 185(a) applies to suits against union officials for violation of a union constitution. See Statham, 97 F.3d at 1416 (Section 185(a) extends to claims against individual officers when international union brings suit for breach of union constitution); Shea, 953 F.2d at 29 (Section 185(a) authorizes suit against union officials who violate union constitution); see also Korzen v. Local Union 705, Int'l Bhd. of Teamsters, 75 F.3d 285, 288 (7th Cir. 1996) (violation of international union constitution falls within scope of Section 185(a), while breach of local constitution does not).

rules. Teamsters Local 174 v. Lucas Flour Co., 369 U.S. 95, 104 (1962). Therefore, "when resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a [29 U.S.C. § 185] claim . . . or dismissed as pre-empted by federal labor-contract law." Allis-Chalmers, 471 U.S. at 220. Counts 5 and 6 are expressly based only on state common law, so the Court does not treat them as Section 185(a) claims. The sole issue is whether, as state law claims, they must be dismissed on grounds of preemption.

Plaintiff argues that Count 5, its state law claim for breach of contract, does not require analysis of the terms of the union constitution and that it therefore is not preempted. Section 185 preempts state law when the Court must consult and interpret the contract at issue to resolve the issues before it. See Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 413 (1988). Here, Count 5 cannot be analyzed without looking to the terms of the constitution. The Court therefore finds that federal law preempts plaintiff's state law claim for breach of the union constitution, and grants defendants' motion to dismiss Count 5.

Defendants next argue that 29 U.S.C. § 185(a) preempts Count 6 – plaintiff's tortious interference claim against UGSOA. Specifically, defendants assert that plaintiff's reliance on its constitution and bylaws requires analysis of a labor "contract" and thus is preempted. Count 6 alleges that UGSOA tortiously interfered with the contract between plaintiff and its union members when UGSOA directed and encouraged Good and Allen not to return property to plaintiff as required by the union constitution. Plaintiff argues that no interpretation of the constitution is required to resolve its tortious interference claim because the terms are clear: upon dissolution of a former local, all funds and property of the local revert to plaintiff. The Supreme Court, however, has held that 29 U.S.C. § 185 preempts state law claims when the claim is "inextricably intertwined with consideration of the terms of the . . . contract." Allis-Chalmers, 471 U.S. at

213. In Int'l Union, United Mine Workers of Am. v. Covenant Coal Corp., 977 F.2d 895, 899 (4th Cir. 1992), the Fourth Circuit examined whether Section 185 preempts a state law claim for tortious interference. See There, Covenant Coal had allegedly required mining companies which subleased from it to repudiate their collective bargaining agreements with the plaintiff union. The union then filed suit against Covenant Coal for (among other things) tortious interference under state law. Id. at 896. The Fourth Circuit found that resolution of the tortious interference claim required it to determine whether the collective bargaining agreement had been breached – a question which necessarily required it to interpret that agreement.[4] It therefore held that Section 185 preempted the state law tortious interference claim.[5]

To determine whether plaintiff's state tort claim is similarly intertwined in this case, the Court must look to the elements of the state tort. Id. at 899. Under Kansas law, plaintiff must plead five elements to state a claim for tortious interference with contract: "(1) the contract; (2) the wrongdoer's knowledge thereof; (3) his or her intentional procurement of its breach; (4) the absence of justification; and (5) damages resulting therefrom." Carson v. Lynch Multimedia Corp., 123 F. Supp.2d 1254, 1262 (D. Kan. 2000). The Fourth Circuit reasoning in Covenant Coal is persuasive, and the Court adopts it here. To determine whether UGSOA tortiously interfered with the union contract, the Court must first determine whether that contract was breached. The tortious interference claim cannot stand independently from the contract – the allegation that UGSOA induced or encouraged Good and Allen not to return funds and property to plaintiff

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[4] Tortious interference under Virginia law requires the same elements as under Kansas law. See id. at 899.

[5] The Fourth Circuit also held that plaintiff could not bring its tortious interference claim under Section 185, and it recognized that plaintiff might appear to be left without a remedy. It noted, however, that plaintiff could seek remedies before the National Labor Relations Board or directly against the mining companies who were parties to the collective bargaining agreement. Id.

is inexplicably intertwined with the terms of the constitution. For this reason, the Court concludes that 29 U.S.C. § 185(a) preempts plaintiff's state law claim for tortious interference. The Court sustains defendants' motion to dismiss Count 6 of the complaint.

Perhaps anticipating this ruling, plaintiff seeks leave to amend to bring its tortious interference claim under 29 U.S.C. § 185(a). Plaintiff cites Cisneros v. ABC Rail Corp., 217 F.3d 1299 (10th Cir. 2000), for its position that a tortious interference claim may be brought as a federal action. Plaintiff's reliance on Cisneros, however, is misplaced. In Cisneros, the Tenth Circuit found that plaintiff's breach of contract claim against his employer could be brought under 29 U.S.C. § 185(a). In United Food & Commercial Workers Union, Local No. 1564 v. Quality Plus Stores, Inc., 961 F.2d 904 (10th Cir. 1992), which is more precisely on point, the Tenth Circuit examined whether 29 U.S.C. § 185 conferred subject matter jurisdiction over a labor union's tortious interference claim against a non-signatory to a collective bargaining agreement. It answered this question in the negative, holding that Section 185 did not confer subject matter jurisdiction because no agreement existed between the parties to the action. Here, as in United Food, no contract exists between plaintiff and defendant UGSOA, and plaintiff's proposed amendment would be futile.

II. Subject Matter Jurisdiction Over State Law Claims

In addition to 29 U.S.C. § 501(b) and 29 U.S.C. § 185(a), plaintiff alleges that jurisdiction is proper under 28 U.S.C. § 1337. Defendants argue that plaintiff's state law claims (Counts 2, 3, 5 and 6) must be dismissed for lack of subject matter jurisdiction because plaintiff has not asserted its claims under any statute which confers jurisdiction.

Under 28 U.S.C. § 1337, the Court has original jurisdiction "of any civil action or proceeding

arising under any Acts of Congress regulating commerce or protecting trade and commerce against restraints and monopolies." Defendants argue that plaintiff's claims have nothing to do with the regulation of commerce or protecting trade and commerce against restraints and monopolies and thus jurisdiction is not proper. Plaintiff does not disagree.

Defendants further argue that jurisdiction over state law claims falls under 28 U.S.C. § 1332 (diversity jurisdiction) or 28 U.S.C. § 1367 (supplemental jurisdiction), which plaintiff has not invoked. Defendants argue that plaintiff cannot assert diversity jurisdiction because the amount in controversy does not exceed $75,000.00. Plaintiff does not rebut this argument. As to defendants' argument that plaintiff has not invoked supplemental jurisdiction under Section 1367, plaintiff seeks leave to amend its complaint to expressly do so.

Once federal question jurisdiction exists, the Court maintains discretion to exercise supplemental jurisdiction over state law claims deriving from a common nucleus of facts, even where the complaint does not assert supplemental jurisdiction. See United Int'l Holdings, Inc. v. Wharf (Holdings) Ltd., 210 F.3d 1207, 1220 (10th Cir. 2000). The state claims in this case form part of the same case or controversy, and the Court therefore exercises supplemental jurisdiction and treats plaintiff's state law claims as properly brought under 28 U.S.C. § 1367. Amendment of the complaint is not necessary.

IT IS THEREFORE ORDERED that Defendants' Motion To Dismiss (Doc. #16) filed July 16, 2004 be and hereby is **OVERRULED**, to the extent that Count 4 seeks equitable relief for breach of contract by Good and Allen under 29 U.S.C. § 185(a). Defendants' motion is also **OVERRULED** as to plaintiff's claims for breach of fiduciary duty (Count 2) and conversion (Count 3) under state law. As to Counts 1, 5 and 6, and those parts of Count 4 which seek damages, defendants' motion is **SUSTAINED.**

Dated this 30th day of December, 2004, at Kansas City, Kansas.

s/ Kathryn H. Vratil
Kathryn H. Vratil
United States District Court